UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff,* v. JAMES HUGH BRENNAN, III, DOUGLAS ALBERT DYER, and BROAD STREET VENTURES, LLC, *Defendants,* and CAROLE JOHNSTON BRENNAN; ALISON F. DYER, *Relief Defendants.*	)	Case No. 1:16-cv-307 Judge Travis R. McDonough Magistrate Judge Susan K. Lee

ORDER

Before the Court is a motion by James Hugh Brennan, III, and Douglas Albert Dyer ("Defendants") for partial relief from an asset freeze (Doc. 94) and Plaintiff's motion for an order to show cause (Doc. 102). On December 29, 2016, the Court heard argument and witness testimony on the motions. For the reasons stated herein, Defendants' motion for relief from the asset freeze (Doc. 94) is **DENIED**, and Plaintiff's motion for an order to show cause (Doc. 102) is **GRANTED**.

On July 20, 2016, Plaintiff filed its complaint against Defendants and Broad Street Ventures, LLC, as well as Carole J. Brennan and Alison F. Dyer ("Relief Defendants"). (Doc. 1.) The complaint alleges securities law violations and asserts that Defendants fraudulently raised millions of dollars from approximately 240 investors in "the Scenic City Companies" and then diverted those funds to themselves and Relief Defendants. (*Id.* at 2.) Despite the millions of dollars allegedly received from investors, Defendants acknowledged at the August 31, 2016 hearing that they have insufficient assets to satisfy the disgorgement Plaintiff seeks.

Upon commencement of this action, Plaintiff moved for a temporary restraining order that, among other things, froze Defendants' and Relief Defendants' assets and restrained Defendants and Relief Defendants from transferring assets and property they controlled or possessed (the "Asset Freeze"). (Doc. 2.) The Court granted the motion (Doc. 16), ordered the Asset Freeze, and set a hearing on Plaintiff's motion for a preliminary injunction. (Doc. 15.) Before the hearing, the parties proposed a consent order granting a preliminary injunction and continuing the Asset Freeze. (Doc. 22.) The Court entered that order ("Preliminary Injunction") on July 27, 2016. (Doc. 24.)

On November 18, 2016, Defendants filed a motion for partial relief from the Asset Freeze so they could direct one of the Scenic City Companies (Scenic City F-10 VIII, Inc.) to issue 209 investors approximately 1.2 million shares of common stock it held in Fision Corporation. (Doc. 94.) Specifically, Defendants requested that the Court "allow them to sign the necessary paperwork for Fision to disburse the shares that are currently held in the name of Scenic City F-10 VIII to the investors/shareholders." (*Id.* at 3.) Many (if not all) of the individual investors to whom Defendants sought to disburse the stock are the alleged victims of Defendants' fraud.

Plaintiff not only opposed Defendants' motion (Doc. 101) but moved for an order to show cause why the Court should not hold Defendants in contempt for violation of the Preliminary Injunction (Doc. 102). Plaintiff presented evidence that Defendant Douglas Dyer previously directed that the Fision stock be disbursed to Scenic City F-10 VIII investors and signed all necessary paperwork to accomplish this disbursement. In other words, Defendant Dyer already took the very actions for which Defendants now seek permission from the Court (Doc. 94), thereby violating the Preliminary Injunction. (Doc. 102, at 3.)

Defendants acknowledge that the Fision stock has already been disbursed and that they have violated the Preliminary Injunction.[1] (Doc. 109, at 6 (Defendants "acknowledge, after having had counsel re-explain to them what needed to be done to have the Fision shares issued and what the Freeze Order restricted, that they violated the Freeze Order by allowing an asset of Scenic City F-10 VIII to be distributed to the investors without getting prior approval from the Court.").) Defendants represent that on October 25, 2016, Dyer sent two documents to the Executive VP of Fision Corp. ("the Irrevocable Stock Power and Corporate Resolution for Sole Signing Officers") that needed to be signed in order to effect the distribution of Fision stock to Scenic City F-10 VIII investors. (*Id.* at 3.) They also represent that on November 4, 2016, Defendants and their counsel met about the need to disburse the Fision stock. (*Id.* at 3–4.) Defense counsel represents that Defendants misunderstood that Dyer could proceed with directing that the stock be disbursed and that, on November 9, 2016, Dyer called the Executive VP of Fision Corp. and instructed him to issue the shares. (*Id.*)

Defendants essentially argue "no harm, no foul" in defense of Dyer's actions and blame Defendant Dyer's actions on a misunderstanding. (*Id.* at 3.) Defendants argue that, although Dyer's actions violated the Preliminary Injunction, they caused no injury, because only the alleged victims of Defendant's scheme—not any Defendant or Relief Defendant—have personally benefitted from the transfer of the Fision shares. (*Id.* at 2, 7.) But the Court's

[1] Although the filings from Defendants admit violating the Preliminary Injunction, the evidence before the Court relates only to Defendant Dyer's actions.

Preliminary Injunction did not proscribe only actions that "benefitted" Defendants or Relief Defendants. The purpose of the Preliminary Injunction, of course, was to preserve the status quo, not simply to deprive Defendants and Relief Defendants from further benefit from allegedly fraudulent actions. Defendants have forfeited to the Court their authority to take such actions, regardless of whom Defendants believe the actions benefit. The Court cannot overlook the violation of its Preliminary Injunction, especially in the context of this case and the facts presented concerning Defendant Dyer's conduct.

Because Defendant Dyer chose to change the status quo in a manner that cannot be cured without significant difficulty, if at all, the only effective way to adequately address his violation of the Preliminary Injunction is a criminal contempt proceeding. "[T]he purpose of criminal contempt is punitive—'to vindicate the authority of the court.'" *U.S. v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). "A litigant may be held in contempt if his adversary shows by clear and convincing evidence that 'he violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order.'" *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998) (citing *Glover v. Johnson*, 934 F.2d 703, 707) (6th Cir. 1991).

Accordingly, for the aforementioned reasons, Defendants' motion for relief from the Asset Freeze (Doc. 94) is **DENIED,** and Plaintiff's motion for an order to show cause (Doc. 102) is **GRANTED**. In accordance with Rule 42 of the Federal Rules of Criminal Procedure 42, the Court requests that the United States Attorney for the Eastern District of Tennessee, Nancy Stallard Harr, or her designee, prosecute Defendant Douglas Albert Dyer for his criminal contempt of the Preliminary Injunction, as described herein. Trial on the issue of contempt is set before the undersigned on **Monday, April 3, 2017, at 9:00 a.m.** in the United States Courthouse in Chattanooga, Tennessee. The Clerk of Court is **DIRECTED** to forward a copy of this order to the United States Attorney.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE